Martin J. Bienenstock
Philip M. Abelson
Vincent Indelicato
PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036
Tel: (212) 969-3000
Fax: (212) 969-2900

Counsel to the Statutory Committee of Equity Security Holders of Breitburn Energy Partners LP, et al.

Hearing Date: March 8, 2017 at 10:00 a.m. (ET)
Objection Deadline: February 16, 2017 at 4:00 p.m. (ET)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re **BREITBURN ENERGY PARTNERS LP, *et al.*,** **Debtors.**[1]	Chapter 11 Case No. 16-11390-SMB (Jointly Administered)
BREITBURN ENERGY PARTNERS LP, *et al.*, **Movants,** **-against-** **STATUTORY COMMITTEE OF EQUITY SECURITY HOLDERS,** **Respondent.**	**Re: ECF No. 992**

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: Breitburn Energy Partners LP (9953); Breitburn GP LLC (9948); Breitburn Operating LP (5529); Breitburn Operating GP LLC (5525); Breitburn Management Company LLC (2858); Breitburn Finance Corporation (2548); Alamitos Company (9156); Beaver Creek Pipeline, L.L.C. (7887); Breitburn Florida LLC (7424); Breitburn Oklahoma LLC (4714); Breitburn Sawtelle LLC (7661); Breitburn Transpetco GP LLC (7222); Breitburn Transpetco LP LLC (7188); GTG Pipeline LLC (3760); Mercury Michigan Company, LLC (3380); Phoenix Production Company (1427); QR Energy, LP (3069); QRE GP, LLC (2855); QRE Operating, LLC (9097); Terra Energy Company LLC (9616); Terra Pipeline Company LLC (3146); and Transpetco Pipeline Company, L.P. (2620). The Debtors' mailing address is 707 Wilshire Boulevard, Suite 4600, Los Angeles, California 90017.

RESPONSE OF STATUTORY COMMITTEE OF EQUITY SECURITY HOLDERS TO MOTION OF DEBTORS PURSUANT TO 11 U.S.C. §§ 105, 363(b), AND 503(c)(3) FOR ENTRY OF AN ORDER APPROVING DEBTORS' 2017 RETENTION AND INCENTIVE PROGRAMS FOR CERTAIN KEY EMPLOYEES

To the Honorable Stuart M. Bernstein, United States Bankruptcy Judge:

The statutory committee of equity security holders (the "Equity Committee")[2] of Breitburn Energy Partners LP, *et al.* (the "Debtors") submits this response to the *Motion of Debtors Pursuant to 11 U.S.C. §§ 105, 363(b), and 503(c)(3) for Entry of an Order Approving Debtors' 2017 Retention and Incentive Programs for Certain Key Employees* [ECF No. 992] (the "Motion"), and respectfully avers as follows:

RESPONSE

1. While the Debtors' equity holders absorbed substantial losses under the leadership of the Debtors' existing management team, the Debtors' four most senior executives received almost $8 million in bonuses over the last year alone. They now stand to obtain an additional $9.66 million if the Court approves the Motion.[3] Mindful of this Court's recent approval of a substantially identical KEIP over the objection of the U.S. Trustee,[4] the Equity Committee does not object to the Motion. But the Court should not construe the Equity Committee's lack of opposition to the Motion as a vote of confidence in the KEIP Executives or the Debtors' restructuring efforts. Indeed, the actions of the KEIP Executives to date explain why.

2. First, the KEIP Executives suspended distributions to equity holders several

[2] Capitalized terms used but not otherwise defined herein have the meanings given to them in the Objection and Motion (as defined herein).

[3] *See* Motion at ¶ 55.

[4] Sep. 15, 2016 Hr'g Tr. at 19:21–27:23.

months before they commenced these chapter 11 cases.[5] Then, after negotiating a $10.7 million bonus program on the eve of the Debtors' bankruptcy filing, the KEIP Executives elected to sell virtually all of their common units,[6] thereby severing any alignment with their equity holders, even though, at the time, the Debtors' own financial statements filed with the U.S. Securities and Exchange Commission showed $1.3 billion of equity value after more than $2.5 billion of write-downs.[7]

3. Despite the absence of representation the KEIP Executives created when they sold all of their common units, the KEIP Executives urged both the United States Trustee and this Court not to use estate assets to fund the appointment of an equity committee.[8] In doing so, they supported valuation testimony this Court discredited showing an enterprise value as low as $1.35 billion,[9] notwithstanding oil prices continued to rise and comparable transactions indicated the

---

[5] *See Declaration of James G. Jackson Pursuant to Local Bankruptcy Rule 1007-2 and in Support of the Debtors' Chapter 11 Petitions and First Day Relief* [ECF No. 13] at ¶ 31.

[6] Breitburn Energy Partners LP, Statement of Changes in Beneficial Ownership (Form 4) (Jun. 1, 2016; May 26, 2016 – Washburn, Halbert S.); (May 26, 2016 – Pease, Mark L.); (Jun. 2, 2016; May 26, 2016 – Jackson, James G.); (Jun. 1, 2016 – Brown, Gregory C.).

[7] *See* Breitburn Energy Partners LP, Annual Report (Form 10-K), at 32 (Feb. 26, 2016); Breitburn Energy Partners LP, Quarterly Report (Form 10-Q), at 17 (May 9, 2016).

[8] *See, e.g., Debtors' Preliminary Omnibus Response to Order to Show Cause Why an Official Committee of Equity Security Holders Should Not Be Appointed* [ECF No. 392] at ¶¶ 10 (noting that "[i]f those seeking the appointment of an Equity Committee and those law firms representing them truly believe there is value for existing equity, they can 'put their money where their mouth is[.]'") and 36 (arguing that because "existing equity cannot carry its burden and demonstrate the likelihood of any distribution, the Debtors' estates and other parties in interest should not be compelled to bear [the costs associated with the appointment of a statutory equity committee].").

[9] *See Declaration and Expert Report of David Cecil (I) in Support of Debtors' Preliminary Omnibus Response to Order to Show Cause Why an Official Committee of Equity Security Holders Should Not Be Appointed and (II) in Response to Declaration of Martin Lewis and the Dillon Valuation Report* [ECF No. 555] at ¶ 12.

value of the Debtors' portfolio of Permian Basin properties had more than doubled.[10] At the same time, they deleted multiple references from the Breitburn website confirming more than $4.5 billion of assets, even though their public statements to investors prior to the deletion stated otherwise.[11]

4. The facts today demonstrate the Debtors' preconceived notions about the lack of equity value appear even ***more*** wrong than they did previously. Oil has been trading at $53,[12] compared to $31 per barrel when these cases filed almost one year ago. The Debtors' most recent monthly operating report continues to show over $600 million of equity value.[13] And demand for Permian Basin assets has swelled to unprecedented levels.[14] The KEIP Executives

---

[10] The Equity Committee understands the KEIP Executives remain unwilling to explore any value-creating options for the Permian assets, despite strong market activity. *Compare* David Michael Cohen, *After Rough and Tumble Year*, *A&D Players Hard at Work in Portfolio Shuffle*, OIL & GAS FIN. J., Dec. 17, 2015 ("PLS analysis shows Permian acreage still commanding an *average of ~$15,000/acre with a high-water mark of $34,800/acre*[.]") (emphasis added), *available at* http://www.ogfj.com/articles/print/volume-12/issue-12/departments/deal-monitor/after-rough-and-tumble-year-adplayers- hard-at-work-in-portfolio-shuffle.html, *with* Ryan Dezember, *Energy Stock Sales Reach Record*, WALL ST. J., June 22, 2016 ("[QEP Resources Inc.] is buying about 9,400 acres of Permian Basin drilling property in West Texas for about $600 million. . . . Tudor, Pickering, Holt & Co., the Houston investment bank, put the *price per acre between $55,000 and $60,000*, 'establishing a new high watermark in the basin,' where it said *many recent deals have been in the $30,000-an-acre range*.") (emphasis added), *available at* http://www.wsj.com/articles/investors-put-stock-in-energy-sector-1466639587.

[11] *See* Breitburn Energy Partners LP Investor Presentation, November 2015 (retrieved on Feb. 16, 2017), *available at* http://files.shareholder.com/downloads/BBEP/2455880592x0x860992/C403FC09-0758-4648-BC03-F84B80C83144/Breitburn_Energy_Jefferies_Conference_v6FINAL_11.11.pdf, at 12.

[12] Crude Oil – Electronic Mar 2017, *Wall Street Journal* (retrieved on February 16, 2017), *available at* http://quotes.wsj.com/futures/CRUDE%20OIL%20-%20ELECTRONIC, attached hereto as **Exhibit A**.

[13] *See Monthly Operating Report for the Period December 1, 2016 – December 31, 2016* [ECF No. 987] at 6.

[14] *See* n.10, *supra*; *see also* Robert Rapier, *The World's Hottest Oil Play*, FORBES, Feb. 12, 2017 ("[The Permian Basin] has seen production there increase by more than a million bpd in

must embrace these realities and not formulate a business plan that grossly understates projected revenues and future commodity prices, so as to artificially reduce the Debtors' true enterprise value, which would confer a windfall on creditors, enrich the KEIP Executives with options issued at below market strike prices, and wipe out the constituency that needs its fiduciaries the most: Breitburn equity holders.

5. The Equity Committee does not dispute the KEIP Executives should receive compensation for meritorious efforts. But the KEIP Executives must strive to achieve not only KEIP milestones, but meaningful recovery to equity holders in these chapter 11 cases. The Equity Committee expects the KEIP Executives will work for this result, and not simply for their bonuses.

[*Remainder of Page Intentionally Left Blank*]

---

the past six years."), *available at* http://www.forbes.com/sites/rrapier/2017/02/12/the-worlds-hottest-oil-play/; Nick Cunningham, *Wall Street Pouring Money Back Into Oil and Gas*, OIL PRICE, Feb. 9, 2017 (describing a 71,000 acre deal that averaged to over $39,000 per acre), *available at* http://oilprice.com/Energy/Oil-Prices/Wall-Street-Pouring-Money-Back-Into-Oil-And-Gas.html; Nick Cunningham, *U.S. Shale Sees Rebound in 2017 . . . But Mostly From the Permian*, Feb. 1, 2017 ("The oil industry invested more than $28 billion in buying up land in the Permian Basin in 2016, three times the amount spent in 2015"), *available at* http://oilprice.com/Energy/Crude-Oil/US-Shale-Sees-Rebound-In-2017But-Mostly-From-The-Permian.html; Collin Eaton and David Hunn, *Exxon Mobil, Big Oil Join Wildcatters in West Texas Surge*, SAN ANTONIO EXPRESS-NEWS, Jan. 17, 2017 ("Exxon Mobil Corp. has joined the drilling frenzy in West Texas with a $6.6 billion deal[.]"), *available at* http://www.expressnews.com/business/eagle-ford-energy/article/Exxon-Mobil-Big-Oil-joins-wildcatters-in-West-10863923.php; Claire Poole, *Kinder Morgan Considering Shedding Its Permian Oil & Gas Properties*, FORBES, Dec. 9, 2016 (describing an oil and gas sale in the Permian Basin potentially valued at over $10 billion), *available at* http://www.forbes.com/sites/clairepoole/2016/12/09/kinder-morgan-considering-shedding-its-permian-oil-gas-properties/; Joe Carroll, *A $900 Billion Oil Treasure Lies Beneath West Texas Desert*, BLOOMBERG, Nov. 15, 2016 ("In a troubled oil world, the Permian Basin is the gift that keeps on giving."), *available at* https://www.bloomberg.com/news/articles/2016-11-15/permian-s-wolfcamp-holds-20-billion-barrels-of-oil-u-s-says.

Dated: February 16, 2017
New York, New York

Respectfully submitted,

/s/ Philip M. Abelson

Martin J. Bienenstock
Philip M. Abelson
Vincent Indelicato
PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036
Tel: (212) 969-3000
Fax: (212) 969-2900

Counsel to the Statutory Committee of Equity Security Holders of Breitburn Energy Partners LP, et al.

EXHIBIT A

Crude Oil – Electronic Mar 2017

THE WALL STREET JOURNAL.

Crude Oil - Electronic Mar 2017

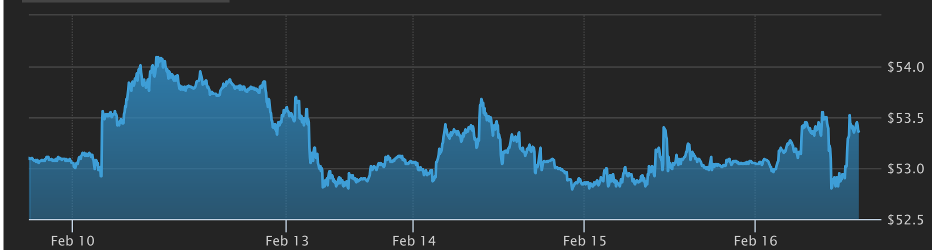
CLH7 (U.S.: Nymex)

2:05 PM EST 02/16/17

$**53.36** USD **0.25 0.47%** ▲

5 D

$ %



Volume
292,001

Open Interest
119,369

1 Day Range
52.68 - 53.59

52 Week Range
39.20 - 56.24
(02/24/16 - 12/12/16)

NEWS FROM WSJ (CLH7)

20 hours ago
Global Risks Begin to Recede

02/15/17
Bullish Cotton Bets Fly in Face of Trump's Trade Rhetoric

02/14/17
Are OPEC's Cuts Adding Up to Lower Oil Prices?

02/13/17
Oil's Hottest Market Adds to Fuel Glut

02/12/17
One Industry Where the U.S. Is Catching China: Fertilizer

02/11/17
Energy Shares: Last Year's Winners, This Year's Laggards

02/10/17
Florida Orange Production Forecast Lowered

02/10/17
U.S. Oil Exports Rising, But Face Hurdles

02/10/17
IEA Says OPEC Reaches Record Compliance With Agreed Cuts

02/08/17
Suncor Profit Buoyed By Rising Commodities and Record Production